

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

MARK STEPHEN MYERSON, M.D.

Case No. 800-2017-038731

**Physician's and Surgeon's
Certificate No. C130136**

Respondent

DECISION

**The attached Stipulated Surrender of License and Order is hereby
adopted as the Decision and Order of the Medical Board of California,
Department of Consumer Affairs, State of California.**

This Decision shall become effective at 5:00 p.m. on August 15, 2018

IT IS SO ORDERED August 8, 2018.

MEDICAL BOARD OF CALIFORNIA

By:


**Kimberly Kirchmeyer
Executive Director**

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 REBECCA D. WAGNER
Deputy Attorney General
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5 San Francisco, CA 94102-7004
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2017-038731

12 **MARK STEPHEN MYERSON, M.D.**

13 **621 Benston Place**
14 **Baltimore, MD 21210**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 **Physician's and Surgeon's Certificate No. C**
16 **130136**

Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California (Board). She brought this action solely in her official capacity and is represented in
23 this matter by Xavier Becerra, Attorney General of the State of California, by Rebecca D.
24 Wagner, Deputy Attorney General.

25 2. Mark Stephen Myerson, M.D. (Respondent) is represented in this proceeding by
26 attorney Mr. Ronald R. Lamb, whose address is: Wilke, Fleury, Hoffelt, Gould & Birney, LLP
27 400 Capitol Mall, Twenty-Second Floor, Sacramento, California 95814.
28

1 3. On or about May 2, 2014, the Board issued Physician's and Surgeon's Certificate No.
2 C 130136 to Mark Stephen Myerson, M.D. (Respondent). The Physician's and Surgeon's
3 Certificate is in delinquent status as it expired on October 31, 2015, and has not been renewed.

4 **JURISDICTION**

5 4. Accusation No. 800-2017-038731 was filed before the (Board), and is currently
6 pending against Respondent. The Accusation and all other statutorily required documents were
7 properly served on Respondent on or about May 1, 2018. Respondent timely filed his Notice of
8 Defense contesting the Accusation. A copy of Accusation No. 800-2017-038731 is attached as
9 Exhibit A and incorporated by reference.

10 **ADVISEMENT AND WAIVERS**

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 800-2017-038731. Respondent also has carefully read,
13 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License
14 and Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
17 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
18 to the issuance of subpoenas to compel the attendance of witnesses and the production of
19 documents; the right to reconsideration and court review of an adverse decision; and all other
20 rights accorded by the California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 **CULPABILITY**

24 8. Respondent understands that the charges and allegations in Accusation No. 800-2017-
25 038731, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and
26 Surgeon's Certificate.

27 9. For the purpose of resolving the charges and allegations in the Accusation without the
28 expense and uncertainty of further proceedings, Respondent agrees that based on the action by the

1 Maryland State Board of Physicians as alleged in the Accusation, cause exists to take action
2 against his California physician's and surgeon's certificate and hereby surrenders his Physician's
3 and Surgeon's Certificate No. C130136 for the Board's formal acceptance.

4 10. Respondent understands that by signing this stipulation he enables the Board to issue
5 an order accepting the surrender of his Physician's and Surgeon's Certificate without further
6 process.

7 CONTINGENCY

8 11. This stipulation shall be subject to approval by the Board. Respondent understands
9 and agrees that counsel for Complainant and the staff of the Board may communicate directly
10 with the Board regarding this stipulation and surrender, without notice to or participation by
11 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he
12 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
13 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
14 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
15 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
16 be disqualified from further action by having considered this matter.

17 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
18 copies of this Stipulated Surrender of License and Order, including Portable Document Format
19 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

20 13. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board may, without further notice or formal proceeding, issue and enter the following Order:

22 ORDER

23 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 130136,
24 issued to Respondent Mark Stephen Myerson, M.D., is surrendered and accepted by the Medical
25 Board of California.

26 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the
27 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
28

1 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
2 of Respondent's license history with the Medical Board of California.

3 2. Respondent shall lose all rights and privileges as a Physician and Surgeon in
4 California as of the effective date of the Board's Decision and Order.

5 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
6 issued, his wall certificate on or before the effective date of the Decision and Order.

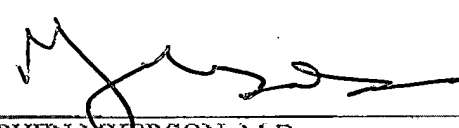
7 4. If Respondent ever files an application for licensure or a petition for reinstatement in
8 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
9 comply with all the laws, regulations and procedures for reinstatement of a revoked or
10 surrendered license in effect at the time the petition is filed.

11 5. Respondent understands that he may not petition for reinstatement as a physician and
12 surgeon for a period of three (3) years from the effective date of his surrender. Information
13 gathered in connection with Accusation number 800-2017-038731 will be considered by the
14 Board in determining whether or not to grant the petition for reinstatement. For the purposes of
15 the reinstatement hearing, the allegations contained in Accusation number 800-2017-038731 shall
16 be deemed to be admitted by Respondent, and Respondent waives any and all defenses based on a
17 claim of laches or the statute of limitations.

18
19 ACCEPTANCE


20 I have carefully read the above Stipulated Surrender of License and Order and have fully
21 discussed it with my attorney, Mr. Ronald R. Lamb. I understand the stipulation and the effect it
22 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of
23 License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
24 Decision and Order of the Medical Board of California.

25
26 DATED: 7/15/2018


27 MARK STEPHEN MYERSON, M.D.
28 Respondent

1 I have read and fully discussed with Respondent Mark Stephen Myerson, M.D. the terms
2 and conditions and other matters contained in this Stipulated Surrender of License and Order. I
3 approve its form and content.

4 DATED: 7/20/2018


MR. RONALD R. LAMB
Attorney for Respondent

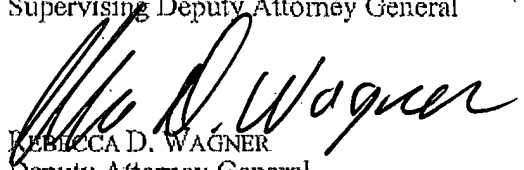
6
7 **ENDORSEMENT**

8 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
9 for consideration by the Medical Board of California of the Department of Consumer Affairs.

10 Dated: 7-24-2018

Respectfully submitted,

11 XAVIER BECERRA
12 Attorney General of California
13 JANE ZACK SIMON
14 Supervising Deputy Attorney General


REBECCA D. WAGNER
15 Deputy Attorney General
16 *Attorneys for Complainant*

17
18 SF2018400552
19 Myerson.mark.stipulation.to.surrender

Exhibit A

Accusation No. 800-2017-038731

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 REBECCA D. WAGNER
Deputy Attorney General
4 State Bar No. 165468
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5 San Francisco, CA 94102-7004
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E-mail: Rebecca.Wagner@doj.ca.gov
7 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO MAY 1 2018
BY: [Signature] ANALYST

8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2017-038731

12 Mark Stephen Myerson, M.D.
621 Benston Place
13 Baltimore, MD 21210

ACCUSATION

14 Physician's and Surgeon's
Certificate No. C 130136,
15

Respondent.

16
17
18 Complainant alleges:

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about May 2, 2014, the Medical Board issued Physician's Certificate Number C
24 130136 to Mark Stephen Myerson, M.D. (Respondent). The Physician's Certificate is in
25 delinquent status as it expired on October 31, 2015, and has not been renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board, under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2227 of the Code states:

2 “(a) A licensee whose matter has been heard by an administrative law judge of the Medical
3 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
4 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
5 action with the board, may, in accordance with the provisions of this chapter:

6 “(1) Have his or her license revoked upon order of the board.

7 “(2) Have his or her right to practice suspended for a period not to exceed one year upon
8 order of the board.

9 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
10 order of the board.

11 “(4) Be publicly reprimanded by the board. The public reprimand may include a
12 requirement that the licensee complete relevant educational courses approved by the board.

13 “(5) Have any other action taken in relation to discipline as part of an order of probation, as
14 the board or an administrative law judge may deem proper.

15 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
16 review or advisory conferences, professional competency examinations, continuing education
17 activities, and cost reimbursement associated therewith that are agreed to with the board and
18 successfully completed by the licensee, or other matters made confidential or privileged by
19 existing law, is deemed public, and shall be made available to the public by the board pursuant to
20 Section 803.1.”

21 5. Section 141 of the Code states:

22 “(a) For any licensee holding a license issued by a board under the jurisdiction of the
23 department, a disciplinary action taken by another state, by any agency of the federal government,
24 or by another country for any act substantially related to the practice regulated by the California
25 license, may be a ground for disciplinary action by the respective state licensing board. A
26 certified copy of the record of the disciplinary action taken against the licensee by another state,
27 an agency of the federal government, or another country shall be conclusive evidence of the
28 events related therein.

1 (b) Nothing in this section shall preclude a board from applying a specific statutory
2 provision in the licensing act administered by that board that provides for discipline based upon a
3 disciplinary action taken against the licensee by another state, an agency of the federal
4 government, or another country.”

5 6. Section 2305 of the Code states:

6 “The revocation, suspension, or other discipline, restriction or limitation imposed by
7 another state upon a license or certificate to practice medicine issued by that state, or the
8 revocation, suspension, or restriction of the authority to practice medicine by any agency of the
9 federal government, that would have been grounds for discipline in California of a licensee under
10 this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action
11 for unprofessional conduct against the licensee in this state.”

12 CAUSE FOR DISCIPLINE

13 **(Discipline, Restriction, or Limitation Imposed by Other Jurisdiction)**

14 7. Respondent Mark Stephen Myerson, M.D. is subject to disciplinary action under
15 sections 141(a) and/or 2305 of the Code in that on November 6, 2017, the Maryland State Board
16 of Physicians issued a Consent Order reprimanding the Respondent, suspending his medical
17 license for fifteen (15) business days, and ordering a monetary fine in the sum of \$50,000. A
18 copy of the Maryland State Board of Physicians Consent Order is attached as Exhibit A. The
19 circumstances are as follows:

20 8. On or about and between June 1, 2010, and June 10, 2017, the Respondent permitted
21 multiple unlicensed foreign medical graduate fellows to perform medical acts and procedures that
22 included performing regional blocks, ordering radiographs and laboratory tests in clinical settings,
23 dictating patient medical records, and applying tourniquets and sutures. The Respondent
24 permitted approximately twelve (12) unlicensed individuals to participate in direct patient care
25 with him, including performing regional blocks and dictating operating notes. None of the
26 foreign medical graduate fellows were registered as unlicensed medical practitioners under
27 Maryland law.

9. Respondent's conduct and the actions of the Maryland State Board of Physicians as set forth in Paragraphs 7 and 8, above, and within the actual Board documents attached as Exhibit A, constitutes unprofessional conduct within the meaning of section 2305 and conduct subject to discipline within the meaning of section 141(a).

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's Certificate Number C 130136, issued to Mark Stephen Myerson, M.D.;

2. Revoking, suspending or denying approval of Mark Stephen Myerson, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Mark Stephen Myerson, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: May 1, 2018

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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myerson.mark.stephen.accusation.docx

Exhibit A

Maryland State Board of Physicians Consent Order

IN THE MATTER OF

MARK S. MYERSON, M.D.

Respondent

License Number: D28380

*

BEFORE THE

*

MARYLAND STATE

*

BOARD OF PHYSICIANS

*

Case Number: 2016-0835A

* * * * *

CHARGES UNDER THE MARYLAND MEDICAL PRACTICE ACT

Disciplinary Panel A of the Maryland State Board of Physicians (the "Board") hereby charges **MARK S. MYERSON, M.D.** (the "Respondent"), License Number D28380, under the Maryland Medical Practice Act (the "Act"), codified at Md. Code Ann., Health Occ. II ("Health Occ. II") §§ 14-101 *et seq.* (2014 Repl. Vol.).

Specifically, Disciplinary Panel A charges the Respondent with violating the following provisions of the Act and Md. Code Regs. ("COMAR") 10.32.07.04F:

Health Occ. II § 14-404. Denials, reprimands, probations, suspensions, and revocations -- Grounds.

- (a) *In general.* -- Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
 - (3) Is guilty of:
 - (ii) Unprofessional conduct in the practice of medicine; [and]
 - (18) Practices medicine with an unauthorized person or aids an unauthorized person in the practice of medicine[.]

COMAR 10.32.07.04. Registration.

- A. The chief of service of the institution providing the postgraduate clinical training program, or the chief's designee, shall register with the Board each unlicensed medical school graduate within 30 days of the effective date of the training program contract between the institution and the unlicensed medical school graduate.
- F. Unprofessional conduct in the practice of medicine. Health Occupations Article, § 14-404(a)(3), Annotated Code of Maryland, includes the failure of a physician to comply with the regulations governing the duty of the chief of service to timely register unlicensed medical practitioners under the chief's charge.

ALLEGATIONS OF FACT¹

Disciplinary Panel A bases its charges on the following facts that it has reason to believe are true:

I. BACKGROUND

- 1. At all times relevant, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on August 31, 1982, under License Number D28380. The Respondent's license is current through September 30, 2017.
- 2. The Respondent is board-certified in Orthopedic Surgery.
- 3. From in or around 2002 to 2016, the Respondent was the medical director of an orthopedic-related unit (the "Unit")² of a health care facility (the "Facility") located in Maryland. Within the Unit, the Respondent created and supervised an international

¹ The allegations set forth in these charges are intended to provide the Respondent with notice of the Board disciplinary panel's action. They are not intended as, and do not necessarily represent, a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with these charges.

² To ensure confidentiality and privacy, the names of individuals, hospitals and healthcare facilities involved in this case are not disclosed in this document. The Respondent may obtain the identity of the referenced individuals or entities in this document by contacting the administrative prosecutor.

fellowship/visitors program (the "Program"). The Program was not a program approved by the Accreditation Counsel for Graduate Medical Education. The Respondent resigned from the Facility on or about August 1, 2016.

4. The Board initiated an investigation of the Respondent after receiving a complaint on or about April 14, 2016, from a former patient (the "Patient") who alleged that the Respondent allowed unlicensed foreign medical graduates to perform medical acts during her surgeries without her knowledge or consent.

II. BOARD INVESTIGATION

5. As part of its investigation, the Board obtained the Respondent's Quality Assurance/Risk Management file from the Facility. A review of the file revealed that in or around June 2016 the Facility conducted an internal investigation of the Respondent's Program at the Facility. Based on records review and interviews with patients, fellows, visitors and the Respondent, the Facility determined that from June 1, 2010, through June 10, 2016, the Respondent allowed a number of foreign medical graduate fellows to perform medical acts that included applying tourniquets and performing regional blocks during surgeries, ordering radiographs and laboratory tests in clinical settings, and dictating patient medical records. None of the foreign medical graduate fellows were registered as unlicensed medical practitioners under Maryland law.

6. On or about February 2, 2017, Board Investigators interviewed the Respondent at the Board's offices. When discussing the roles of foreign medical graduate fellows during the interview, the Respondent stated:

So when they interviewed with me they were told that they were coming to work hands-off. So there was to be no hands-on

work that was done. And my goal had been to then observe them during the period of a week, a month, two months, assess their skills, and then allow them to participate in assisting me in surgery. And something went wrong.

I made a huge mistake with the administration of the credentialing and between myself and the hospital it fell through the cracks because they arrived and I never really followed up on ensuring that they had the appropriate credentials in the hospital.

It became a little bit gray initially because they went to the staff office. They were given their badge. They were all recorded by the hospital and it really -- I can't say it's the hospital's fault. It was my responsibility and I really made a terrible mistake administratively to let them do more than they should have been doing. And that started to take place probably about a month into their training.

7. During the interview, a Board investigator asked the Respondent about the types of patient contact the foreign graduate fellows had, and the Respondent stated:

So let us begin by saying this. It's a very curious situation. As soon as you have someone you're teaching who is helping you it slows you down immensely, okay. My nurses used to pray for the day when there were no fellows around; U.S. fellows, international fellows. They were at a meeting and I was doing everything on my own because I would work very quickly and very efficiently.

When I was working with them I'm teaching them. They would assist me initially by just being there, you know, retracting, doing anything. And then as I saw what their skill level really was, I would then let them do some of the dissection to prepare things for me. Then we reach a point where I took over on every single surgery.

We would call that, for want of a better term, the critical part of the surgery which involves three dimensional positioning, insertion of screws, plates, and so on. I would always do that myself and then at the completion, once we had taken our x-rays, I left the room and the fellows always put in the stitches. So I was never in the room, never, when the stitches were being put in.

8. When a Board Investigator asked the Respondent about the roles of the foreign graduate fellows in his clinic, the following exchange took place:

Q. And what is the clinic? Is it for like followups and all that stuff?

A. That clinic would simply be bandage changers, because that was always what we considered a postop clinic. So that's all it was; bandage changes, put on cast, get an x-ray, and check the incision. That's all it was.

Q. Okay.

A. And then if there had been a problem my partner was always there as backup.

Q. Okay. So they were being supervised by either you or your partner?

A. That's correct.

Q. Okay. Were they, I guess, performing physical exams or anything like that?

A. Yes. They would have to as part of the -- there would be some hands-on of some sort, yes.

Q. Okay. And they would, like, order labs or other radiological tests?

A. They would order x-rays. Typically not labs, but they would order x-rays. That was fairly routine.

...

Q. Okay. Would they dictate under your user name?

A. You know, they would dictate under anybody's user ID. Typically, the fellows shared the user ID with the international fellows and if for some reason they wanted mine they would use mine. I was never involved in that process. You know, we worked as a team and the international fellows were considered part of the team. And so the fellows who were there, the U.S. fellows and the international fellows really worked one on one together. One helped the other and that's probably where it came from.

ATTORNEY: But they would sign their own names, they wouldn't sign your name?

A. No, they signed their own name, that's correct.

9. During the interview, the Respondent did not dispute that from 2010 to 2016, he permitted approximately 12 foreign graduate fellows to participate in direct patient care with him. Out of approximately 1,480 surgical cases, approximately 921 included a foreign graduate fellow listed as the first assistant who performed regional blocks and dictated operating notes.

III. GROUNDS FOR DISCIPLINE

10. Respondent's actions of not registering foreign graduate medical fellows as unlicensed medical practitioners and permitting them to perform medical acts, such as performing regional blocks, retracting, dissecting, suturing, ordering radiographs, performing physical examinations and dictating medical records, constitute, in whole or in part: engaging in unprofessional conduct in the practice of medicine, in violation of Health Occ. II § 14-404(a)(3)(ii); practicing medicine with an unauthorized person or aiding an unauthorized person in the practice of medicine, in violation of § 14-404(a)(18); and a violation of COMAR 10.32.07.04A and F.

NOTICE OF POSSIBLE SANCTIONS

If, after a hearing, Disciplinary Panel B finds that there are grounds for action under Health Occ. II § 14-404(a)(3)(ii), (18), and/or COMAR 10.32.07.04A and/or F, Disciplinary Panel B may impose disciplinary sanctions in accordance with the Board's regulations under COMAR 10.32.02.10(2015), including reprimanding the Respondent, placing the Respondent on probation, or suspending or revoking the Respondent's

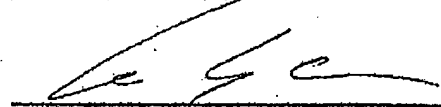
license, and may place the Respondent on probation, and/or may impose a monetary penalty.

NOTICE OF DISCIPLINARY COMMITTEE FOR CASE RESOLUTION

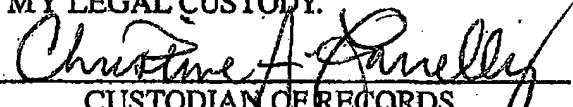
The Respondent may appear before Disciplinary Panel A, serving as the Disciplinary Committee for Case Resolution ("DCCR") in this matter, on **WEDNESDAY, DECEMBER 6, 2017, 9:00 A.M.**, at the Board's offices, 4201 Patterson Avenue, Baltimore, Maryland 21215. The nature and purpose of the DCCR is described in the attached letter to the Respondent. If this matter is not resolved before the DCCR, a prehearing conference and hearing will be scheduled before an Administrative Law Judge at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland 21031. The hearing will be conducted in accordance with the Administrative Procedure Act, Md. Code Ann., State Gov't II §§ 10-201 et seq. (2014 Repl. Vol.).

8/28/17
Date

BRIAN E. FROSH
ATTORNEY GENERAL


K. F. Michael Kao
Assistant Attorney General
Office of the Attorney General
Health Occ. Prosecution & Litigation Div
300 West Preston Street, Suite 201
Baltimore, Maryland 21201

I HEREBY ATTEST AND CERTIFY UNDER
PENALTY OF PERJURY ON 02/16/18
THAT THE FORGOING DOCUMENT IS A
FULL, TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE AND
IN MY LEGAL CUSTODY.


CHRISTINE A. DANELLI
CUSTODIAN OF RECORDS
MARYLAND BOARD OF PHYSICIANS

IN THE MATTER OF

MARK S. MYERSON, M.D.

Respondent

License Number: D28380

*

BEFORE THE

*

MARYLAND STATE

*

BOARD OF PHYSICIANS

*

Case Number: 2016-0835A

* * * * *

CONSENT ORDER

On August 28, 2017, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") charged **MARK S. MYERSON, M.D.** (the "Respondent"), with violating the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. II ("Health Occ. II") §§ 14-101 *et seq.* (2014 Repl. Vol.).

Specifically, the Panel A charged the Respondent with violating the following provisions of the Act and Md. Code Regs. ("COMAR") 10.32.07.04F:

Health Occ. II § 14-404. Denials, reprimands, probations, suspensions, and revocations -- Grounds.

- (a) *In general.* -- Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(3) Is guilty of:

(li) Unprofessional conduct in the practice of medicine;
[and]

(18) Practices medicine with an unauthorized person or aids an unauthorized person in the practice of medicine[.]

COMAR 10.32.07.04. Registration.

- A. The chief of service of the institution providing the postgraduate clinical training program, or the chief's designee, shall register with the Board each unlicensed medical school graduate within 30 days of the effective date of the training program contract between the institution and the unlicensed medical school graduate.
- F. Unprofessional conduct in the practice of medicine. Health Occupations Article, § 14-404(a)(3), Annotated Code of Maryland, includes the failure of a physician to comply with the regulations governing the duty of the chief of service to timely register unlicensed medical practitioners under the chief's charge.

On October 11, 2017, a settlement conference before Panel A serving as a Disciplinary Committee for Case Resolution took place. As a result, the Respondent agreed to enter into this public Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Disciplinary Panel A of the Board makes the following Findings of Fact:

I. BACKGROUND

- 1. At all times relevant, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on August 31, 1982, under License Number D28380. The Respondent's license is current through September 30, 2019.
- 2. The Respondent is board-certified in Orthopedic Surgery.
- 3. From in or around 2002 to 2016, the Respondent was the medical director of an orthopedic-related unit (the "Unit")¹ of a health care facility (the "Facility") located

¹ To ensure confidentiality and privacy, the names of individuals, hospitals and healthcare facilities involved in this case are not disclosed in this document. The Respondent may obtain the identity of the referenced individuals or entities in this document by contacting the administrative prosecutor.

in Maryland. Within the Unit, the Respondent created and supervised an international fellowship/visitors program (the "Program"). The Program was not a program approved by the Accreditation Counsel for Graduate Medical Education. The Respondent resigned from the Facility on or about August 1, 2016.

4. The Board initiated an investigation of the Respondent after receiving a complaint on or about April 14, 2016, from a former patient (the "Patient") who alleged that the Respondent allowed unlicensed individuals to perform medical acts and procedures during her surgeries without her knowledge or consent.

II. BOARD INVESTIGATION

5. As a result of the Board's investigation, it determined that at certain points in time from June 1, 2010, through June 10, 2016, the Respondent permitted unlicensed individuals to perform medical acts and procedures that included performing regional blocks, ordering radiographs and laboratory tests in clinical settings and dictating patient medical records.

6. On or about February 2, 2017, Board investigators interviewed the Respondent at the Board's offices. The Respondent admitted that the unlicensed individuals performed medical acts and procedures.

7. During the interview, a Board investigator asked the Respondent about the types of patient contact the unlicensed individuals had, and the Respondent stated:

When I was working with them I'm teaching them. They would assist me initially by just being there, you know, retracting, doing anything. And then as I saw what their skill level really was, I would then let them do some of the dissection to prepare things for me. Then we reach a point where I took over on every single surgery.

We would call that, for want of a better term, the critical part of the surgery which involves three dimensional positioning, insertion of screws, plates, and so on. I would always do that myself . . . and then at the completion, once we had taken our x-rays, I left room and the fellows always put in the stitches.

8. The Respondent stated that at times the unlicensed individuals used his i.d. to log on to a computer system to dictate patient notes, although they always signed under their own name. The Respondent described the roles of the unlicensed individuals in his clinic (under supervision) as follows:

Q. And what is the clinic? Is it for like followups and all that stuff?

A. That clinic would simply be bandage changers, because that was always what we considered a postop clinic. So that's all it was; bandage changes, put on cast, get an x-ray, and check the incision. That's all it was.

Q. Okay.

Q. Okay. Were they, I guess, performing physical exams or anything like that?

A. Yes. They would have to as part of the -- there would be some hands-on of some sort, yes.

Q. Okay. And they would, like, order labs or other radiological tests?

A. They would order x-rays. Typically not labs, but they would order x-rays. That was fairly routine.

9. During the interview, the Respondent did not dispute that from 2010 to 2016, he permitted approximately 12 unlicensed individuals to participate in direct patient care with him, including performing regional blocks or dictating operating notes.

10. During fiscal years 2015 and 2016, the Respondent was identified as the primary surgeon in 1480 cases. During those years, the Respondent permitted seven unlicensed individuals to perform regional blocks in 150 cases and dictate the operative report in 771 cases.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Disciplinary Panel A of the Board concludes as a matter of law that the Respondent: is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. II § 14-404(a)(3)(ii); and practiced medicine with an unauthorized person or aided an unauthorized person in the practice of medicine, in violation of § 14-404(a)(18).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by a majority of the quorum of Disciplinary Panel A considering this case:

ORDERED that the Respondent is hereby **REPRIMANDED**, and it is further

ORDERED that the Respondent's license is hereby **SUSPENDED** for **15 BUSINESS DAYS**, and it is further

ORDERED that after 15 business days, the Board will administratively terminate the suspension of Respondent's license; and it is further

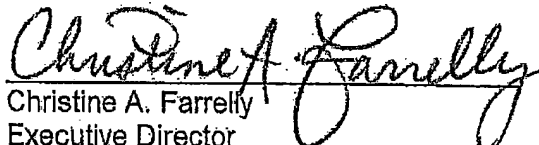
ORDERED that within one year the Respondent shall pay a monetary fine in the amount of **\$50,000** by bank certified check or money order made payable to the Maryland Board of Physicians, P.O. Box 37217, Baltimore, Maryland 21297; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that, unless stated otherwise in the order, any time prescribed in this order begins when the Consent Order goes into effect. The Consent Order goes into effect upon the signature of the Board's Executive Director, who signs on behalf of the Disciplinary Panel; and it is further

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Provisions §§ 4-101 *et seq.* (2014).

11/06/2017
Date


Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

CONSENT


I, Mark S. Myerson, M.D., acknowledge that I am represented by counsel and have consulted with counsel before entering into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of Disciplinary Panel A of the Board to initiate these proceedings and to

issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of Disciplinary Panel B of the Board that might have followed after any such hearing.

I sign this Consent Order, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

11/2/17
Date

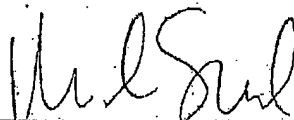

Mark S. Myerson, M.D.

NOTARY

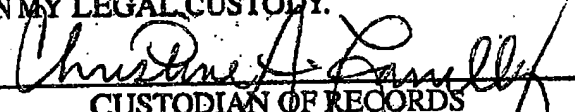
STATE OF MARYLAND
CITY/COUNTY OF Anne Arundel

I HEREBY CERTIFY that on this 2nd day of November, 2017, before me, a Notary Public of the foregoing State and City/County personally appear Mark S. Myerson, M.D. and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

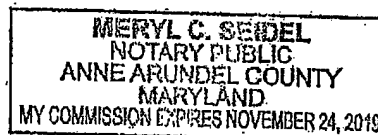
AS WITNESSETH my hand and notary seal.


Notary Public

I HEREBY ATTEST AND CERTIFY UNDER PENALTY OF PERJURY ON 11/24/18 THAT THE FORGOING DOCUMENT IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE AND IN MY LEGAL CUSTODY.


CHRISTINE A. LAVELLE
CUSTODIAN OF RECORDS
MARYLAND BOARD OF PHYSICIANS

My commission expires: 11/24/19



IN THE MATTER OF

MARK S. MYERSON, M.D.

Respondent

License No. D28380

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BEFORE THE

MARYLAND STATE BOARD

OF PHYSICIANS

Case No. 7718-0053 A

* * * * *

ORDER

On August 28, 2017, Board Disciplinary Panel A ("Panel A") charged Respondent Mark S. Myerson, M.D. with unprofessional conduct, Md. Code Ann., Health Occ. § 14-404(a)(3)(ii), and practicing medicine with an unauthorized person or aiding an unauthorized person in the practice of medicine, Health Occ. § 14-404(a)(18). On November 6, 2017, Panel A and Dr. Myerson entered into a Consent Order, based upon Dr. Myerson's violations of sections 14-404(a)(3)(ii) and (18) of the Health Occupations Article. Under the Consent Order, Panel A ordered that Dr. Myerson's license to practice medicine in Maryland was suspended for 15 business days and that he would pay a fine of \$50,000 within one year.¹ Based upon the conclusion of the suspension period, it is hereby

ORDERED that the suspension of Dr. Myerson's license to practice medicine in Maryland is **TERMINATED**; and it is further

ORDERED that, within one year of the November 6, 2017, Consent Order, Dr. Myerson shall pay a monetary fine in the amount of \$50,000 by bank certified check or money order made payable to the Maryland Board of Physicians, P.O. Box 37217, Baltimore, Maryland 21297; and it is further

¹ A copy of the Consent Order is incorporated by reference and available upon request.

ORDERED that Dr. Myerson shall be responsible for all costs under this order; and it is further

ORDERED that this order is a public document.

11/29/2017
Date

Christine A. Farrelly
Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

I HEREBY ATTEST AND CERTIFY UNDER
PENALTY OF PERJURY ON 02/16/18
THAT THE FORGOING DOCUMENT IS A
FULL, TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE AND
IN MY LEGAL CUSTODY.

Christine A. Farrelly
CUSTODIAN OF RECORDS
MARYLAND BOARD OF PHYSICIANS